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Attorneys for Defendants, Dr. Lori Bennett, in her individual and official capacities as President of Clovis Community College, Marco J. De La Garza, in his individual and official capacities as Vice President of Student Services at Clovis Community College, Gurdeep Hebert, in her individual capacity and official capacities as Dean of Student Services at Clovis Community College; Patrick Stumpf, in his individual and official capacities as Senior Program Specialist at Clovis Community College

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ALEJANDRO FLORES; DANIEL FLORES;
JULIETTE COLUNGA; and YOUNG
AMERICANS FOR FREEDOM AT CLOVIS
COMMUNITY COLLEGE,

Plaintiffs,

v.

DR. LORI BENNETT, in her individual and official capacities as President of Clovis Community College; MARCO J. DE LA GARZA, in his individual and official capacities as Vice President of Student Services at Clovis Community College; GURDEEP HEBERT, in her individual and official capacities as Dean of Student Services at Clovis Community College; and PATRICK STUMPF, in his individual and official capacities as Senior Program Specialist at Clovis Community College,

Defendants.

Case No.: 1:22-cv-01003-JTL-HBK

**ADDITIONAL DECLARATION OF
MEET AND CONFER EFFORTS OF
ANTHONY N. DEMARIA IN SUPPORT
OF DEFENDANTS' MOTION TO STAY
THE CASE PENDING THE RULING OF
THE NINTH CIRCUIT ON
DEFENDANTS' INTERLOCUTORY
APPEAL**

Date: May 22, 2023
Time: 9.00 a.m.
Ct. Room: 4
Judge: Hon. Jennifer L. Thurston

1 I, Anthony N. DeMaria, declare as follows:

- 2 1. I am an attorney, duly admitted to practice before the Courts of the State of California
3 and before this Court, I am the owner of DeMaria Law Firm, A.P.C., attorneys of record
4 for the Defendants Lori Bennett ("Ms. Bennett"), Marco J. De La Garza ("Mr. Garza"),
5 Gurdeep Hebert ("Mr. Hebert") and Patrick Stumpf ("Mr. Stumpf") (collectively
6 referred to as "Defendants"), in the above-entitled action.
- 7 2. If called as a witness, I would and could competently testify to all facts stated herein
8 from my personal knowledge, except where stated upon information and belief, and, as
9 to these matter, I am informed and believe them to be true.
- 10 3. I met and conferred with Plaintiffs' attorneys regarding the motion to stay this case
11 before filing the motion. Plaintiffs' attorneys declined to agree to stay this case and
12 refused to stipulate to the motion to stay.
- 13 4. Attached hereto as Exhibit "A" is a redacted copy of e-mail correspondence with
14 attorneys for Plaintiffs, regarding meeting and conferring with attorneys for Plaintiffs,
15 prior to filing a motion to stay. Portions of Exhibit "A" are redacted because they pertain
16 to privileged settlement communications. (Evid. R. 404.) Plaintiffs sought to push
17 discovery despite the Ninth Circuit hearing Order, and Defendants asked Plaintiffs to
18 stipulate to a stay, stating that a motion to stay would be filed, to which Plaintiffs' refused
19 to stipulate.
- 20 5. On March 31, 2023, attorneys for Plaintiff stated that they would not stipulate to Defense
21 Counsel's motion to stay and renewed their request to schedule a Rule 26(f) conference.
- 22 6. Attached hereto as Exhibit "B" is a redacted copy of e-mail correspondence with
23 attorneys for Plaintiffs, regarding meeting and conferring with attorneys for Plaintiffs,
24 prior to filing a motion to stay. Portions of Exhibit "B" are redacted because they pertain
25 to privileged settlement communications. (Evid. R. 404.)
- 26 7. Attached hereto as Exhibit "C" is a redacted copy of Defense Counsel's further e-mail
27 correspondence with attorneys for Plaintiffs regarding filing the motion to stay. Portions
28 of Exhibit "B" are redacted because they pertain to privileged settlement

1 communications. (Evid. R. 404.)

2 8. Given that the case is not at issue, Plaintiffs' Complaint has not been finalized yet, and
3 that Defendants' interlocutory appeal, which is essentially determinative of the case and
4 pending before the Ninth Circuit, for which the Ninth Circuit has set the appeal for oral
5 arguments, along with Plaintiffs' refusal to stipulate to staying the proceedings,
6 Defendants filed the instant motion on April 21, 2023, which is after the meet and confer
7 efforts occurred.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct and that this declaration was executed by me on April 25 2023, at Fresno,
10 California.

11 By:  _____

EXHIBIT “A”

Isha Gulati

From: Anthony DeMaria
Sent: Wednesday, March 29, 2023 6:52 PM
To: Daniel Ortner; Jeff Zeman; Jessie Appleby; Jay Diaz
Cc: Christopher Galarza
Subject: Updated posting procedure and settlement response
Attachments: Young Americans - Letter 3.27.23.pdf

I do note that the 9th circuit will be setting a hearing date, while not denying the appeal on the papers, as well. As you know, this was a discretionary hearing matter for the 9th circuit and it had the option of denying the appeal on the papers (which, statistically, a majority of the discretionary hearing appeals to the 9th circuit are decided on the papers only, with no hearing, though I am sure you have those statistics as well). The 9th circuit procedures state that a discretionary hearing matter will only be set for oral arguments if one or more of the judges on the review panel decline to rule on the papers and desire a hearing. As such, we will seek an order to stay the underlying case until the ruling from the 9th circuit, as the ruling of the 9th circuit will have a significant effect on the underlying case itself, including potentially be determinative of the entire matter. Please advise if you will stipulate to the stay or if we should file the motion. This is my meet and confer as to the motion to stay.

From: Daniel Ortner <daniel.ortner@thefire.org>
Sent: Tuesday, March 28, 2023 11:17 AM
To: Anthony DeMaria <Ademaria@demarialawfirm.com>; Jeff Zeman <jeff.zeman@thefire.org>; Jessie Appleby <jessie.appleby@thefire.org>; Jay Diaz <jay.diaz@thefire.org>
Subject: Re: Setting up a 26(f) conference

Anthony,

Hope you had a good weekend.

I wanted to follow up on my request to set up a rule 26(f) conference. We do not see any cause for delay and would like to get this call on the calendar as soon as possible so that discovery can move forward.

Best,

Daniel Ortner
*Attorney**
Foundation for Individual Rights and Expression
510 Walnut Street, Suite 1250
Philadelphia, PA 19106

Office: (215)-717-3473 (ex. 295)

Mobile: (385)-242-9582

daniel.ortner@thefire.org

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@dortner1

*Member of the Virginia and California bars

On Thu, Mar 16, 2023 at 1:58 PM Daniel Ortner <daniel.ortner@thefire.org> wrote:

Anthony,

We plan to move ahead with discovery in the Flores v. Bennett case. When would you be available to conduct a 26(f) conference call? Perhaps sometime the week after next? Please let us know your availability.

Best regards,

Daniel Ortner

EXHIBIT “B”

Isha Gulati

From: Anthony DeMaria
Sent: Friday, March 31, 2023 2:55 PM
To: Christopher Galarza
Subject: FW: Motion to Stay

From: Anthony DeMaria
Sent: Friday, March 31, 2023 2:54 PM
To: 'Daniel Ortner' <daniel.ortner@thefire.org>; Jessie Appleby <jessie.appleby@thefire.org>; Jeff Zeman <jeff.zeman@thefire.org>; Jay Diaz <jay.diaz@thefire.org>
Subject: RE: Motion to Stay

Thank you for the response. Obviously, we do not have agreement on that point and we will proceed with the motion to stay the District Court action. There is no need to debate the motion points herein, as you do not agree, so we will file with the court. That makes our position that no discovery should take place until the 9th Circuit hears and rules on the appeal, taking note of the fact that the merit review already designated the matter for hearing and not ruling on the papers. If the ruling of the 9th circuit is in our favor, and there is a finding that *Planned Parenthood* applies and there was no violation, then certainly I do not agree that any damages could be awarded and a defense judgment would ultimately be entered. That would make all four individual defendants the prevailing parties against the named plaintiffs.

From: Daniel Ortner <daniel.ortner@thefire.org>
Sent: Friday, March 31, 2023 2:43 PM
To: Anthony DeMaria <Ademaria@demarialawfirm.com>; Jessie Appleby <jessie.appleby@thefire.org>; Jeff Zeman <jeff.zeman@thefire.org>; Jay Diaz <jay.diaz@thefire.org>
Subject: Motion to Stay

Anthony,

We will not stipulate to your motion to stay the underlying case and will oppose such a motion.

We do not see any reason why the underlying case should be delayed while we wait for the resolution of your preliminary injunction appeal.

Any discovery that is conducted will remain relevant to the underlying case especially since you recognize that claims for damage will continue regardless of the outcome of the PI appeal. Our clients (and other students at Clovis) also have a significant interest in the efficient resolution of their case given the First Amendment issues involved and the fact that Clovis Administrators keep altering the flyer policy and other policies related to student expression. A permanent and final judgment in our clients' favor is therefore crucial to ensure that their rights do not continue to be in jeopardy. And your clients will not suffer prejudice as a result of allowing the ordinary course of discovery to proceed.

Accordingly, we renew our request to schedule a Rule 26(f) conference.

Best

Daniel Ortner
*Attorney**
Foundation for Individual Rights and Expression
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Philadelphia, PA 19106
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Mobile: (385)-242-9582
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EXHIBIT “C”

Isha Gulati

From: Anthony DeMaria
Sent: Tuesday, April 18, 2023 11:01 AM
To: Daniel Ortner
Cc: Jay Diaz; Jessie Appleby; Jeff Zeman
Subject: Re: Follow up regarding Discovery and 26(f) Conference

No need for your motion. A draft of our motion to stay has already been created. We anticipate filing it this week. You can raise all of your issues in response thereto.

Sent from my iPhone

On Apr 18, 2023, at 10:54 AM, Daniel Ortner <daniel.ortner@thefire.org> wrote:

Anthony,

Following up on our previous conversation regarding proceeding with discovery, we would like to renew our request to schedule a 26(f) conference and begin to schedule discovery.

This is our fourth request for a scheduling conference. We sent similar requests on March 6, March 28, and March 31. On March 31 you informed us that you would not agree to a 26(f) conference, and instead would file a motion to stay discovery. No motion has been filed in this case more than two weeks later. We therefore ask you once again to schedule a 26(f) conference for sometime next week or the week after. Some proposed dates and times that work for us would be Monday April 24 at 10 am; Wednesday April 26 at 1 PM; Tuesday May 2 at 9 am; or Friday May 5 at 10 am

If you do not respond by April 21 agreeing to one of our suggested dates/times or providing alternative dates/times for the 26(f) conference, we will be forced to ask the Court to compel Defendants' participation in the conference.

Thank you.

Sincerely

Daniel Ortner
*Attorney**
Foundation for Individual Rights and Expression
510 Walnut Street, Suite 1250
Philadelphia, PA 19106
Office: (215)-717-3473 (ex. 295)
Mobile: (385)-242-9582
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*Member of the Virginia and California bars

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 1684 W. Shaw Avenue, Fresno, CA 93711.

On April 25, 2023, I served true copies of the following document(s) described as **ADDITIONAL DECLARATION OF MEET AND CONFER EFFORTS OF ANTHONY N. DEMARIA IN SUPPORT OF DEFENDANTS' MOTION TO STAY THE CASE PENDING THE RULING OF THE NINTH CIRCUIT ON DEFENDANTS' INTERLOCUTORY APPEAL** on the interested parties in this action as follows:

Counsel for Plaintiff –

Daniel M. Ortner, Esq. 329866
Gabriel Z. Walters, Esq.
Jeffrey D. Zeman, Esq.
Foundation for Individual Rights and Expression
510 Walnut Street, Suite 1250
Philadelphia, PA 19106
T: 215-717-3473
Daniel.ortner@thefire.org
Gabe.walters@thefire.org
Jeff.zeman@thefire.org

BY MAIL: I enclosed said document(s) in a sealed envelope or package addressed to the persons at the address listed on the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day the correspondence is placed from collection and mailing it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully pre-paid.

✕ By E-Mail or Electronic Transmission: Based on a court order or an agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on April 25, 2023, at Fresno, California.


Chris Galarza